

**Executive Session Minutes**  
**April 13, 2016 @ 11:50 AM**

Commissioners present: Commissioners Timothy Dooling, Kathleen Fallon, Kate Fitzpatrick, James Machado, Robert McCarthy, Jennifer Sullivan, and Chairman Philip Y. Brown.

PERAC Staff Present: Executive Director Joseph Connarton, Deputy Executive Director Joseph Martin, Deputy Director and General Counsel John Parsons, Deputy General Counsel and Managing Attorney Judith Corrigan, Compliance Counsel Derek Moitoso, and Senior Executive Assistant Kim Boisvert.

Mr. Connarton gave the history of the Modification Policy and then briefed the Commission about the Modification hearing for Mr. Richard Sweeney. He stated that communications have occurred between the Boston Retirement Board and Mr. Sweeney. In order for Mr. Sweeney to be able to continue to receive his health care benefits the Commission must take a vote and modify his pension.

A brief discussion ensued regarding his past and future earnings capacity, continuing to file his annual earned income statement, repayment of his over earnings, and the ability to continue receiving his health insurance benefits.

Commissioner McCarthy made a motion to modify Mr. Sweeney's retirement benefit down to just enough to cover the payments for his health insurance. Commissioner Fitzpatrick seconded the motion and a roll call vote was taken as follows:

Chairman Philip Brown YES, Commissioners Timothy Dooling YES, Kathleen Fallon YES, Kate Fitzpatrick YES, James Machado YES, Robert McCarthy YES, and Jennifer Sullivan YES

Ms. Corrigan discussed the state and federal issues of the *Bettencourt* decision and the possibility of an appeal. If the Attorney General allows PERAC to appeal this case the Supreme Court of the United States must then decide whether they will hear it or not. Ms. Corrigan is very concerned that this decision may not be applied fairly and equally, now that some people may be subject to pension forfeiture and others may not.

Further discussion ensued regarding PERAC drafting more specific Section 15 language for the legislature, that PERAC should promulgate not legislate, partial vs. full pension forfeiture, and what amount would be considered the level of "excessive" fine. The Commission complimented Ms. Corrigan for her due diligence in this case and further noted that PERAC did its job. The Commission stated that even though the decision is not in PERAC's favor it is not a negative view on PERAC, and that PERAC should exhaust all of its options by requesting the Attorney General's opinion. There was a recommendation that Chairman Brown attend a meeting with the Attorney General along with designated PERAC staff.

Mr. Connarton explained that Ice Miller, tax counsel for PERAC, State and Teachers' retirement boards, issued a draft opinion last week relative to PERAC funding and other exclusive benefit issues. The attorney/client privilege draft opinion was not provided to PERAC until late on April 8,

2016. Mr. Connarton distributed the draft opinion to the Commission. PERAC gave the approval for State and Teachers' to request an opinion from Ice Miller. However, this does appear to be a conflict of interest especially since PERAC wasn't permitted to either review or comment on the draft opinion relative to the non-PERAC issues. Further, Mr. Connarton is troubled by the actions of the State and Teachers' Retirement Boards in their delay to provide PERAC with a copy of the draft opinion and for further doubting the Commission's ability to keep this matter confidential. Mr. Connarton stated that the request included several items such as the Exclusive Benefit Rule, retroactive reimbursement from the Commonwealth, ORP Pension Plan, COLA, 3(8)c requests, and other issues.

Discussion ensued regarding seeking another opinion from another tax counsel, the Commonwealth reimbursing the State and Teachers', how this matter effects the bond rating (based on funded ratios), and the ability to have a full discussion on this matter with the Attorney General if needed.

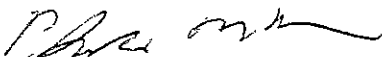
Commissioner McCarthy made a motion to seek a second opinion regarding PERACs funding and the IRS implications. Commissioner Fallon seconded the motion and a roll call vote was taken as follows:

Chairman Philip Brown YES, Commissioners Timothy Dooling YES, Kathleen Fallon YES, Kate Fitzpatrick YES, James Machado YES, Robert McCarthy YES, and Jennifer Sullivan YES

Commissioner McCarthy made a motion to return to the regular order of business and to adjourn the Executive Session at 1:23 PM. Commissioner Fitzpatrick seconded the motion and a roll call vote was taken as follows:

Chairman Philip Brown YES, Commissioners Timothy Dooling YES, Kathleen Fallon YES, Kate Fitzpatrick YES, James Machado YES, Robert McCarthy YES, and Jennifer Sullivan YES

Approved:



Philip Y. Brown, Chairman  
Public Employee Retirement  
Administration Commission